

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	*	
GLENN ROYCE FAVRE	*	CHAPTER 7
	*	CASE NO. 08-85264 - MHM
DEBTOR.	*	JUDGE MURPHY

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GLENN ROYCE FAVRE,	*	
PLAINTIFF	*	
	*	
VS.	*	AP No. 09-09070 - MHM
	*	
RAY MARTIN,	*	
DEFENDANT.	*	

NOTICE OF HEARING

PLEASE TAKE NOTICE that Ray Martin has filed a Motion to Dismiss and related papers with the Court seeking an order dismissing the above style adversary proceeding.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion to Dismiss in Courtroom 1204, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia at 2:45 p.m. on 9<sup>th</sup> day of February, 2010.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's office is Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

This 7<sup>th</sup> day of January, 2010.

/s/ Keith Eady  
Keith Eady (Ga Bar No. 237038)  
Counsel for Movant  
PO Box 29667  
Atlanta, GA 30359  
(404) 633-1997

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
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<b>IN RE:</b>	*	
<b>GLENN ROYCE FAVRE</b>	*	<b>CHAPTER 7</b>
	*	<b>CASE NO. 08-85264 - MHM</b>
<b>DEBTOR.</b>	*	<b>JUDGE MURPHY</b>

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<b>GLENN ROYCE FAVRE,</b>	*	
	*	
<b>PLAINTIFF</b>	*	
	*	
<b>VS.</b>	*	<b>AP No. 09-09070 - MHM</b>
	*	
<b>RAY MARTIN,</b>	*	
	*	
<b>DEFENDANT.</b>	*	

**MOTION TO DISMISS**

Comes now the above named Defendant, by his attorney, and requests that this Honorable Court dismiss the above style adversary proceeding. For grounds state:

**FIRST GROUND**

1. Debtor/Plaintiff filed Chapter 7 bankruptcy on December 9, 2008 and received his discharge on April 7, 2009.
2. Any claims that Debtor may have had against the Defendant were prepetition claims that were required to be disclosed in Debtor's petition.
3. Defendant was not listed in the Debtor's petition, and no alleged claim or cause of action against the Defendant was listed in Debtor's petition.
4. Any claims were discharged when the discharge order was entered in the Debtor's main bankruptcy case and the debtor/plaintiff is now judicially estopped from raising this cause of action.

SECOND GROUND

5. Defendant moves for dismissal on the grounds that he was never served with a copy of the complaint.
6. Plaintiff alleges that he served the Defendant by first class mail return receipt requested.
7. Plaintiff's own pleading (court document #6), clearly reflects that the complaint was never served on Defendant and that it was returned by the postal service to the Plaintiff as undelivered.
8. Defendant's first learned of the complaint when he received the motion for default judgment.
9. Since service of the complaint is deficient, Defendant requests the adversary proceeding to be dismissed.

WHEREFORE, Defendant requests that the Honorable Court dismiss the above style adversary proceeding with prejudice and grant such other relief as it may deem just proper.

Dated, this the 16<sup>th</sup> day of December, 2009.

/s/ Keith Eady  
Keith Eady  
Attorney for the Defendant  
Georgia Bar No. 237038

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
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IN RE: \*  
GLENN ROYCE FAVRE \* CHAPTER 7  
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DEBTOR. \* JUDGE MURPHY

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GLENN ROYCE FAVRE, \*  
\*  
PLAINTIFF \*  
\*  
VS. \* AP No. 09-09070 - MHM  
\*  
RAY MARTIN, \*  
\*  
DEFENDANT. \*

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this day served a true and correct copy of the MOTION TO DISMISS and NOTICE OF HEARING by depositing same in the United States Mail with correct postage addressed to the following:

Glenn Royce Favre  
110 South Columbia Drive  
#11  
Decatur, GA 30030

U.S. Trustee  
Suite 362  
75 Spring Street  
Atlanta, GA 30303

This 7<sup>th</sup> day of January, 2010.

/s/ Keith Eady  
Keith Eady  
Attorney for the Defendant  
Georgia Bar No. 237038

Keith Eady & Associates, LLC  
PO Box 29667  
Atlanta, GA 30359  
(404) 633-1997  
[Keith@keitheady.com](mailto:Keith@keitheady.com)